

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DOC #:
DATE FILED: 8/25/08

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THE NEW YORK CITY DISTRICT COUNCIL
OF CARPENTERS PENSION FUND, et al.,

Plaintiffs,

08 Civ. 4258 (RJH)

- against -

ORDER

NEW WAY GENERAL CONSTRUCTION, INC.

Defendant.
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On July 15, 2008, the Court entered a Memorandum Opinion and Order granting Plaintiffs' petition to confirm an arbitration award issued on March 25, 2008. On July 18, 2008, the Clerk of the Court entered judgment and closed the case. On July 21, 2008, the Court received a letter from Plaintiffs' counsel requesting that the Court amend the July 18, 2008 Judgment to include the terms of the arbitration award.

The Court grants Plaintiffs' application. The July 15, 2008 Memorandum Opinion and Order and the July 18, 2008 Judgment are hereby vacated and the following Order and Judgment is entered *nunc pro tunc* to July 18, 2008.

ORDER AND JUDGMENT

Plaintiffs bring this action pursuant to section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185(a) ("LMRA"), section 502(a) of the Employee Retirement Security Act, 29 U.S.C. § 1132(a) ("ERISA"), and section 9 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 9, to confirm an arbitration award issued March 25, 2008 (the

“Award”). The complaint was filed on May 5, 2008, and served upon Defendant shortly thereafter. To date, Defendant has not filed an answer or opposition in this action.

“[T]he confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.” *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984). As such, the Second Circuit has held that “default judgments in confirmation/vacatur proceedings are generally inappropriate.” *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 109 (2d Cir. 2006). Rather when a district court has before it a record, “such as an agreement to arbitrate and the arbitration award decision itself, . . . the judgment the court enters should be based on th[at] record.” *Id.* Under the LMRA, an arbitration award should be upheld as long as it “draws its essence from the collective bargaining agreement.” *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Even if the Court is convinced that the “[the arbitrator] committed serious error,” the award should not be vacated so long as the arbitrator is “even arguably construing or applying the contract and acting within the scope of his authority.” *United Paperworkers Int’l v. Misco*, 484 U.S. 29, 38–39 (1987). Under § 9 of the FAA upon timely application by any party, a court *must* grant an order to confirm an arbitration award unless the award is vacated, modified, or corrected as prescribed in §§ 10 and 11 of the FAA. *See Hall St. Assocs. v. Mattel, Inc.*, 128 S. Ct. 1396, 1405 (2008).

Having reviewed the Award and the July 21, 2008 “Affidavit of Services” of Andrew Grabois, the Court confirms the Award and enters judgment as follows:

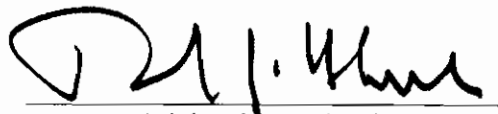
It is ORDERED, ADJUDGED and DECREED that Plaintiffs have judgment against Defendant, pursuant to the Award in the amount of \$2,350.00, representing

arbitration costs and fees, plus attorneys' fees and costs arising out of this action in the amount of \$797.50, for a total of \$3,147.50 plus interest on the arbitration costs and fees at the rate of 10% from the date of the Award; and

It is further ORDERED, ADJUDGED and DECREED that pursuant to the Award, defendant New Way General Construction, Inc. and its officers are ordered to permit and facilitate the Funds (as defined in the Award) conducting an audit of its books and records for the period of July 1, 2002 through March 25, 2008 to determine whether it is in compliance with its obligations to contribute to the Funds.

SO ORDERED

Dated: New York, New York
August 25, 2008

A handwritten signature in black ink, appearing to read 'R. J. Holwell', written over a horizontal line.

Richard J. Holwell
United States District Judge

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

Date:

In Re:

-v-

Case #:

()

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. No personal checks are accepted.

J. Michael McMahon, Clerk of Court

by: _____

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-V-	X X	<p>NOTICE OF APPEAL</p> <p>civ. ()</p>
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Notice is hereby given that _____
(party)
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the _____ day of _____, _____
(day) (month) (year)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**MOTION FOR EXTENSION OF TIME
TO FILE A NOTICE OF APPEAL**

civ.

()

Pursuant to Fed. R. App. P. 4(a)(5), _____ respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the judgment in this action entered on _____ but failed to file a
(day)
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

FORM 2

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**NOTICE OF APPEAL
AND
MOTION FOR EXTENSION OF TIME**

civ. ()

1. Notice is hereby given that _____ hereby appeals to
(party)
the United States Court of Appeals for the Second Circuit from the judgment entered on _____.
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time
_____ respectfully requests the court to grant an extension of time in
(party)
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, _____ states that
(party)
this Court's judgment was received on _____ and that this form was mailed to the
(date)
court on _____
(date)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

FORM 3

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-----X
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-V-
|
-----X

AFFIRMATION OF SERVICE

civ. ()

I, _____, declare under penalty of perjury that I have
served a copy of the attached _____

upon _____

whose address is: _____

Date: _____
New York, New York

(Signature)

(Address)

(City, State and Zip Code)

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006